

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF)

JOSEPH R. GRATCHNER,)

Complainant,)

AND)

WAYNE DALTON OF PALATINE, A)

DIVISION OF WAYNE DALTON CORP.)

Respondent.)

Charge No. 2000CA0482

ALS No. 11388

EEOC No. 21B993013

ORDER AND DECISION

April 12, 2004

The Commission by a panel of three:

Commissioners David Chang, Sakhawat Hussain, and Spencer Leak, Sr., presiding.

This matter comes before the Commission on review of the May 29, 2003 Recommended Order and Decision issued by Administrative Law Judge Sabrina M. Patch and exceptions filed thereto.

For Complainant: Ted A. Donner
Donner & Company Law Offices LLC
Westside Office

For Respondent: Christopher J. Freeman
Zolliger, D'atri, Gruber, Thomas & Co.

Illinois Human Rights Commission: James E. Snyder, General Counsel,
Matthew Z. Hammoudeh, Asst. General Counsel.

On review of Judge Patch's recommendations, the public hearing record, the exceptions filed by the Complainant and for the reasons set forth herein, the Recommended Order and Decision is reversed. The manifest weight of the evidence supports the finding that the Respondent's articulated explanation for discharging the Complainant was a pretext for unlawful discrimination. We therefore find the Respondent unlawfully discriminated against the Complainant on the basis of his age. This matter is remanded to the Chief Administrative Law Judge for further proceedings consistent with this order.

I. Nature of the Case.

Joseph R. Gratchner (Complainant) began working for Wayne Dalton of Palatine (Respondent) on November 21, 1995. The Complainant was an Operations Supervisor of Wayne-Dalton of Palatine Regional Operation Center (Palatine ROC) reporting to Timothy McNinch, Market Area Manager of Northern Illinois.

The Complainant was discharged at the age of 55, on August 16, 1999. On September 29, 2000, the Complainant filed a Charge of Civil Rights Violation alleging the Respondent discriminated against him on the basis of age when it discharged him from his job.

II. Proceedings.

Following a public hearing, Judge Patch issued a Recommended Order and Decision.

Judge Patch found that the Complainant proved a *prima facie* case of unlawful discrimination based upon age and that the Respondent articulated a legitimate, non-discriminatory explanation for its actions.

Judge Patch also found that the totality of the evidence failed to support that age was a motivating factor in the Complainant's discharge. Judge Patch concluded that the Complainant had not established, by a preponderance of the evidence, that the Respondent's proffered explanation was a pretext for unlawful discrimination.

Judge Patch recommended that the Complaint against the Respondent be dismissed with prejudice.

The Complainant filed exceptions to this recommendation.

III. Findings

In reviewing an Administrative Law Judges' findings of fact, the Commission will adopt the Judge's findings unless they are contrary to the manifest weight of the evidence presented at the hearing, 775 ILCS 5/8A-103(E)(2). The Commission reviews a question of law *de novo* and is empowered to modify, reverse, or sustain the Judge's recommendations, in whole or in part, 775 ILCS 5/8A-103(E).

Age Discrimination

The Human Rights Act prohibits discrimination in employment because of a person's age and forbids covered employers to discriminate based on age "with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment," 775 ILCS 5/2-102(A) (1996).

Judge Patch found that the Complainant established a prima facie case of unlawful discrimination so as to require the Respondent to explain its action with respect to Complainant's discharge. Judge Patch also found that the Respondent articulated a neutral, non-discriminatory explanation for the Complainant's discharge; namely, that the Complainant did not enter a set of orders into the computer system. After review of the record, we agree with those findings.

Judge Patch found that the Respondent's articulation was not a pretext for age discrimination.

The Complainant takes exception to the recommendation of dismissal. The Complainant argues that the manifest weight of the evidence supports the finding that the Respondent's asserted explanation for discharging the Complainant, that he did not enter a set of orders into the computer system, was a pretext for age discrimination.

Whether an employer's articulated explanation for its employment decision is pretextual is a question of fact, and the question before the Commission is whether Judge Patch's finding of no pretext is contrary to the manifest weight of the evidence.

A Complainant may establish pretext by showing either that (1) the employer's explanations are not worthy of belief; (2) the proffered explanation had no basis in fact; (3) the proffered explanation did not actually motivate the decision; or (4) the proffered explanation was insufficient to motivate the decision. *Robert M. Sola v. Illinois Human Rights Comm'n*, 316 Ill.App.3d 528 (1st Dist. 2000).

During his tenure with the employer, the Complainant received only one performance appraisal given by his first line supervisor, Tim McNinch, dated February 20, 1997. It provided an overall performance rating of "consistent performance, meets requirements." In that performance appraisal, Complainant is described as having "good attention to detail which is reflected in each area of the jobs [he was performing]." The Complainant is also described as "trustworthy and loyal" and as "reliable [and] energetic." The performance review also provides that the Complainant "perform[ed] routine tasks consistently" and that his supervisory skills were "fine in this area", that he was thoughtful and challenged his employees.

The Complainant received no other written performance appraisals or job performance reviews or disciplinary notices until June 7, 1999.

On June 7, 1999, the Complainant received an "Employee Warning Report", from Gus Schultz (Shultz), Director of the Western Regional Operations Center. That report indicated that the Complainant must stop the bickering between employees in the warehouse because it was visible to customers and harmful to business. That same day, Complaint responded to the Employee Warning Report with a memo to Shultz setting forth the guidelines and training he would put in place in order to see that the customer

service needs were met. He requested personnel resources and direct control of all employees in order to complete that task.

The Complainant was injured and on sick leave from July 14, 1999 until Monday August 9, 1999. On August 9, the day the Complainant returned from sick leave, he received an “Employee Warning Report” in which management complained that the Complainant failed to complete accounting and inventory reports.

On August 12, 1999, three days after the Complainant’s return, Schultz allegedly found a manila folder that, in his belief, contained orders from customers that he believed had not been entered into the computer system. Schultz believed that the status of the orders was unclear and the orders appeared not to have been processed correctly, making it difficult to determine whether the orders had been shipped and/or paid for. Shultz testified that this was the trigger event that caused him to discharge the Complainant. Tr. Pgs. 197-198, 263.

The Complainant testified that it was essentially impossible to complete the orders without entering them into the computer system and that Schultz’s supposed explanation for being concerned with the problem was completely lacking in merit; no testimony was offered in rebuttal. Tr. pg. 79.

On May 11, 1999, the Complainant and his coworker, Wayne Hitt (Hitt) were notified of changes in their job duties; changes were memorialized in a document that Schultz gave to the Complainant in May of 1999. The Complainant’s job description did not include entering orders. In contrast, entering orders was a duty listed on Hitt’s job description.

The record also indicates that the Complainant was not responsible for all of the orders in question and did not have authority over all of the employees to ensure the tasks were completed. In the Joint Pre-Trial Memorandum, the Respondent agreed that the record established these facts providing “[Hitt] also performed order processing functions, he was never supervised by Gratchner.” The Complainant also testified that the job of completing the orders had always belonged to Hitt and that while he was on medical leave, whatever orders there were to be done would have been in the computer room where Hitt would have been working. Tr. pgs. 90; 337-53. Shultz was unable to explain how and where this folder was found. Tr. pg. 265.

We find that the Respondent’s articulated explanation for discharging Complainant was a pretext for unlawful discrimination where the manifest weight of the evidence supports the conclusions that the Respondent’s explanation is not worthy of belief and the proffered explanation has no basis in fact.


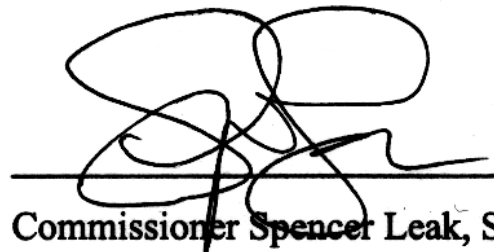
IT IS HEREBY ORDERED THAT:

1. The Recommended Order and Decision issued in this matter is not adopted; and

2. This matter is remanded to the Chief Administrative Law Judge for proceedings consistent with this Order.

ENTERED: April 12, 2004

HUMAN RIGHTS COMMISSION


Commissioner David Chang
Commissioner Sakhawat Hussain
Commissioner Spencer Leak, Sr.

(Panel C, Commissioners Chang, Hussain and Leak)